

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CANDACE R. STEPHENS

Claimant

VS.

CREEKSTONE FARMS PREMIUM BEEF

Respondent

AND

**AMERICAN HOME ASSURANCE COMPANY and
COMMERCE & INDUSTRY INSURANCE COMPANY)**

Insurance Carriers

Docket No. 1,013,348

ORDER

Claimant appealed the July 29, 2004 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges she injured her left lower extremity at work on September 3, 2003, and sustained various injuries, including injuries to her head, low back, hips, both upper extremities and both lower extremities, at work on September 12, 2003. In the July 29, 2004 preliminary hearing Order, Judge Clark denied workers compensation benefits to claimant.

Claimant contends Judge Clark erred. Claimant contends she proved she sustained accidental injury arising out of and in the course of her employment with respondent. Accordingly, claimant requests the Board to reverse the July 29, 2004 Order and grant her temporary total disability and medical benefits.

Conversely, respondent and its insurance carriers request the Board to affirm the preliminary hearing Order.

The only issue before the Board on this appeal is whether claimant sustained accidental injury arising out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant began working for respondent in August 2003. Claimant's job in fabrication at respondent's plant involved a variety of duties, such as boxing ribs, packing, trimming and sorting. While performing her duties in fabrication, claimant had to stand.

Claimant testified her left foot hurt on September 3, 2003, from wearing her work boots. According to claimant, she was referred to the company nurse and doctor after notifying respondent's human resources office that her left foot hurt. Claimant also sought treatment at South Central Kansas Regional Medical Center and saw Dr. David A. Schmeidler, her personal physician.

On September 12, 2003, claimant alleges she sustained various injuries from falling down some stairs at work after being terminated by respondent. Claimant testified that as she was being escorted from the plant after her termination, she slipped while starting down some stairs. According to claimant, she went in the air and landed on the stairs, striking the back of her head, back, legs and arms. Claimant testified she lost consciousness for a few minutes. An ambulance took claimant to a local hospital where she was treated and released that same day. Claimant then sought treatment with Dr. Schmeidler.

Several witnesses testified on behalf of respondent. Russell Wright, respondent's human resources director, did not see claimant fall on September 12, 2003. But Mr. Wright testified he saw claimant 10 or 15 seconds after she fell and that she was conscious.

Brandi Arreolla is employed by respondent as a trainer. Ms. Arreolla testified she and James D. Miller, captain for security at respondent's plant, were escorting claimant from respondent's plant at the time of her fall. Ms. Arreolla's version of claimant's fall differs from claimant's version. Ms. Arreolla, who was on claimant's right side, stated claimant kicked her own leg out before she fell. According to Ms. Arreolla, claimant landed on her buttocks with her lower back hitting the step above, but claimant did not hit her head and she did not lose consciousness.

Mr. Miller stated he saw claimant's leg in the air at the time of her fall. Mr. Miller testified that claimant landed on her buttocks and that claimant did not strike her head or lose consciousness. According to Mr. Miller, immediately after the fall claimant complained

of pain in her left hand, arm and shoulder and pain in her right leg but she did not complain of any problems with her buttocks, back, head or neck.

This claim hinges on claimant's credibility. After observing claimant and respondent's witnesses testify and reviewing the exhibits entered into evidence at the preliminary hearing, Judge Clark was not persuaded that claimant sustained accidental injury arising out of and in the course of her employment with respondent. Claimant has the burden to prove her right to an award of compensation and to prove the various conditions on which that right depends.¹ The Board agrees there are many discrepancies between claimant's testimony and the medical records, including discrepancies regarding claimant's condition and symptoms immediately after the fall and discrepancies regarding previous complaints and medical treatment. The Judge found claimant failed to sustain her burden of proof. The Board finds no persuasive reason to disturb that finding.

WHEREFORE, the Board affirms the July 29, 2004 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of September 2004.

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carriers
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ See K.S.A. 44-501.